



DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2020-0016] 234E1700D2; ETISF0000.EAQ000 EEEE500000]

RIN 1082-AA02

Risk Management, Financial Assurance, and Loss Prevention—Decommissioning Activities and Obligations

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Safety and Environmental Enforcement (BSEE) issues this final rule to clarify and formalize its regulations related to decommissioning responsibilities of Outer Continental Shelf (OCS) oil, gas, and sulfur lessees and grant holders to ensure compliance with lease, grant, and regulatory obligations. This rule implements provisions of the proposed rule intended to clarify decommissioning responsibilities of right-of-use and easement (RUE) grant holders and to formalize BSEE's policies regarding performance by predecessors ordered to decommission OCS facilities. This rule withdraws the proposal to amend BSEE's regulations to require BSEE to proceed in reverse chronological order against predecessor lessees, owners of operating rights, and grant holders when requiring such entities to perform their accrued decommissioning obligations if the current lessees, owners, or holders have failed to perform.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Executive Summary

On October 16, 2020, the Bureau of Ocean Energy Management (BOEM) and BSEE published a proposed rule entitled “Risk Management, Financial Assurance and Loss Prevention.” (85 FR 65904). In this final rule, the Department of the Interior (Department or DOI) implements certain proposed revisions to regulations administered by BSEE. BOEM intends to issue a new proposed rule for the provisions within its regulatory purview.

The BSEE-administered portion of the proposed rule would have established that BSEE could only proceed in reverse chronological order against predecessor lessees, owners of operating rights, and grant holders when requiring them to perform their accrued decommissioning obligations if the current lessees, owners, or holders failed to perform. The BSEE-administered provisions also proposed to clarify decommissioning responsibilities for RUE grant holders, promulgate as regulations BSEE policy surrounding the obligations of predecessors when ordered to decommission, and require that any party appealing and seeking to stay a final decommissioning order post a surety bond.

This final rule focuses on clarifying decommissioning obligations of RUE grant holders and promulgating as regulations BSEE policy regarding the obligations of predecessors ordered to perform decommissioning. BSEE has decided to withdraw its proposal that would have established the reverse chronological order constraint on BSEE’s pursuit of predecessor lessees, owners of operating rights, and grant holders for performance of their accrued decommissioning obligations. BSEE has also chosen not to finalize the proposed appeal bonding requirements.

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I. Preamble Acronyms and Abbreviations

To ease the reading of this preamble and for reference purposes, the following acronyms and abbreviations are used in the preamble:

ASLM Assistant Secretary for Land and Minerals Management

BOEM Bureau of Ocean Energy Management

BSEE Bureau of Safety and Environmental Enforcement

DOI or Department of the Interior

Department

E.O. Executive Order

FR *Federal Register*

IBLA Interior Board of Land Appeals

IC Information Collection

IRIA Initial Regulatory Impact Analysis

NTL Notice to Lessees and Operators

OCS Outer Continental Shelf

OCSLA Outer Continental Shelf Lands Act

OIRA Office of Information and Regulatory Affairs (a sub-agency within OMB)

OMB Office of Management and Budget

PRA Paperwork Reduction Act

RCO Reverse Chronological Order

RIA Regulatory Impact Analysis

ROW Right-of-Way

RUE Right-of-Use and Easement

SBA Small Business Administration

Secretary Secretary of the Interior

S.O. Secretary's Order

II. Background of BSEE Regulations

A. BSEE Statutory and Regulatory Authority and Responsibilities

BSEE derives its authority primarily from the OCS Lands Act (OCSLA), which authorizes the Secretary of the Interior (Secretary) to regulate oil and gas exploration, development, and production operations on the OCS. Secretary's Order 3299 delegated authority to perform certain of these regulatory functions to BSEE. To carry out its responsibilities, BSEE regulates offshore oil and gas operations to enhance the safety of exploration for and development of oil and gas on the OCS, and to ensure that those operations protect the environment, conserve the natural resources of the OCS, and implement advancements in technology. BSEE's regulatory program covers a wide range of facilities and activities, including decommissioning requirements, which are the primary focus of this rulemaking. Detailed information concerning BSEE's regulations and guidance to the offshore oil and gas industry may be found on BSEE's website at: <http://www.bsee.gov/Regulations-and-Guidance/index>.

B. Summary of Differences Between the Proposed and Final Rules for BSEE Provisions

For a comprehensive discussion of the proposed rule provisions, please refer to the notice of proposed rulemaking published in the *Federal Register* on October 16, 2020 (85 FR 65904). BSEE's responses to submitted comments is found in section III of this preamble. The changes made in response to comments include:

1. Timeframes for Responding to Decommissioning Orders - §§ 250.1704 and 250.1708(b)(1) through (3)

BSEE may issue an order to predecessors to perform accrued decommissioning obligations if subsequent assignees have failed to perform them. In the proposed rule, BSEE proposed to require such predecessors to take certain actions following receipt of an order to perform, including:

- (1) Beginning maintenance and monitoring within 30 days,
- (2) Designating an operator for decommissioning within 60 days, and

(3) Submitting a decommissioning plan within 90 days.

Multiple commenters asserted that the proposed 30/60/90-day timeframes for taking those actions were too short. In this final rule, BSEE is moving the provisions to § 250.1708(a), retaining the 30-day timeframe for beginning maintenance and monitoring, and extending the timeframes for compliance with the other two requirements as follows:

(1) Designate an operator (or agent) for the decommissioning activities within 90 days of receiving the order; and

(2) Submit a decommissioning plan to BSEE within 150 days of receiving the order.

These revised timeframes provide clarity and consistency and allow sufficient time to implement the decommissioning process expeditiously and effectively.

2. Requiring a Surety Bond to Stay the Effectiveness of Decommissioning Orders During Appeal - § 250.1709 and 30 CFR 290.7

In the proposed rule, BSEE proposed to require a party that files an appeal of a BSEE decommissioning order and seeks to obtain a stay of that order during the appeal to post a surety bond in an amount adequate to ensure completion of the decommissioning activities. Multiple commenters asserted that such a surety bond is not necessary in light of other existing and adequate financial assurance requirements designed to secure decommissioning obligations. BSEE agrees with these commenters and is not finalizing the proposed appeal bond provisions in § 250.1709 and 30 CFR 290.7.

3. The Reverse Chronological Order (RCO) Process for BSEE to Issue Predecessor Decommissioning Orders - § 250.1708

The proposed rule would have limited BSEE's ability to issue decommissioning orders by requiring BSEE to issue the orders to predecessors through an RCO process, *i.e.*, to the most recent predecessor first. Multiple commenters expressed concerns and divergent views about this proposal and the appropriate approach for issuing decommissioning orders to predecessors when current interest holders fail to perform. Based on the comments received, BSEE is not finalizing

the RCO provisions. BSEE will continue to evaluate the process for issuing decommissioning orders and will continue to issue decommissioning orders in the most efficient manner on a case-by-case basis, in accordance with its longstanding regulatory authority and practice.

4. Revising References to Predecessors in Subpart Q Definition of “You” and “I” - § 250.1701(d)

The proposed rule would have added references to the predecessors of various interest holders in the definitions of “you” and “I” applicable to the regulations in part 250 subpart Q. A commenter noted that these revisions should be applicable only to the regulations regarding the accrued decommissioning obligations of predecessors. BSEE has rephrased the definitions in this final rule to better reflect this intended outcome.

III. Discussion of Comments

The Bureaus divided the comments received on the proposed rule into separate BOEM and BSEE dockets. In this section, BSEE addresses comments received on its proposals, beginning with an overview of comments and then proceeding to comments by section number.

A. Overview of Comments on the BSEE Portion of the Proposed Rule

In response to the proposed rule, BOEM and BSEE received approximately 36 unique sets of comments from various entities, including individual companies, industry organizations, non-governmental organizations, and private citizens. Of those 36 commenters, 21 submitted comments on the BSEE-administered provisions. Some entities submitted comments on both BOEM and BSEE provisions. All relevant comments are posted at the Federal e-Rulemaking portal: <http://www.regulations.gov>. To access comments on the BSEE docket at that website, enter BSEE-2020-0016 in the search box. BSEE reviewed all comments submitted. This section summarizes notable comments and BSEE’s responses.

B. Specific Comments on the BSEE Portion of the Proposed Rule

Summary: The majority of the comments that BSEE received expressed general support for the proposed rule. BSEE received supportive comments from oil and gas companies, contractors,

industry trade groups, and a private citizen. Some of the commenters who expressed general support for the proposed rule also provided detailed comments on specific provisions, addressed further below. However, while these commenters voiced support broadly for the proposed changes, some of the commenters also asserted that specific provisions would impose unnecessary regulatory burdens and suggested revisions to the proposed regulatory text, as discussed below.

Other commenters expressed general opposition to the proposed rule and many of its key provisions. For example, one non-governmental organization suggested that BOEM and BSEE should “withdraw” the proposed rule. For a discussion of the substantive comments in opposition to specific provisions and BSEE’s responses, refer to later parts of this section.

1. RUE Grant Holders Accruing Liabilities Comment: Several commenters responded favorably to the proposal to amend part 250 subpart Q to expressly state that RUE grant holders accrue decommissioning obligations in the same manner as lessees, operating rights holders, and right-of-way (ROW) grant holders. One commenter observed that the proposal’s alignment of RUE references in §§ 250.1700, 250.1701, 250.1702, 250.1703, and 250.1725, in conjunction with BOEM’s proposed revisions to 30 CFR parts 550 and 556, which would also use RUE terminology, more accurately reflect existing practices on the OCS.

Response: BSEE agrees with the commenters and is including the proposed provisions in the final rule without change.

2. 30/60/90 Day Timeframes for Responding to Predecessor Decommissioning Orders

Comment: Multiple commenters submitted substantive comments on proposed § 250.1708(b), which proposed timeframes for predecessors to take initial organizational measures and submit decommissioning plans following receipt of an order to perform accrued decommissioning obligations. Commenters generally embraced the concept of a tiered series of dates for predecessors to begin monitoring and maintaining facilities, select a designated

operator, and submit a decommissioning plan. However, these same commenters said the timeframes for completing these steps at proposed § 250.1708(b)(1) through (3) were unreasonably short. The commenters stated that complex well fields and platforms would require more time for development of suitably robust decommissioning plans. Another commenter noted that predecessor parties will need time to obtain records and diagrams of facilities from current interest holders, who may not be cooperative in providing access to documents or facilities.

Response: When current interest holders fail to perform required decommissioning, BSEE must ensure that predecessors holding the accrued obligations expeditiously and properly monitor, maintain, and decommission wells, pipelines, and facilities to minimize safety hazards, environmental harm, and interference with navigation or other uses of the OCS (such as fishing and future resource development). However, BSEE understands and agrees with the commenters' concerns about the timeframes. Therefore, BSEE is modifying the proposed timeframes, which are now found in final § 250.1708(a), as follows:

- (1) Begin maintaining and monitoring within 30 days of receiving the order (as proposed);
- (2) Designate the operator or agent for the decommissioning activities within 90 days of receiving the order (as opposed to 60 days in proposed rule); and
- (3) Submit a decommissioning plan to BSEE within 150 days of receiving the order (as opposed to 90 days in proposed rule).

BSEE also retains discretion to extend or shorten these timeframes under extenuating circumstances to effectively implement the decommissioning process.

3. Bonding for Appeals of Decommissioning Orders

Comment: BSEE's proposal (at § 250.1709 and 30 CFR 290.7) to require a surety bond for stays of decommissioning orders pending appeal met with mixed views. Most commenters understood BSEE's rationale for establishing a mechanism to protect against the risks of default during the pendency of appeals filed with the Interior Board of Land Appeals (IBLA). Some raised no objections to the surety bond requirement as proposed. Other commenters contended

that BSEE does not need such bonds because BSEE can defend its order by opposing a motion to stay. Furthermore, these commenters asserted that a party who successfully obtains a stay of a decommissioning order under the IBLA's standards should not be required to post security for the stayed order. One commenter also asserted that the proposed surety bond raised due process concerns.

Response: While BSEE disagrees that the proposed provisions raise due process concerns, BSEE agrees with the commenters' assertions that the proposed surety bond would be unnecessary given existing IBLA procedures and existing requirements for financial assurance. Accordingly, BSEE is not finalizing the proposed appeal bond requirements.

Comment: Several commenters suggested that the surety bond provisions should not apply to appellants who can demonstrate that they qualify under credit rating standards proposed or promulgated by BOEM at 30 CFR 550.166(d) and 556.901. The commenters questioned why BSEE would require a surety bond from a predecessor or interest holder if BOEM does not require additional financial assurance from that entity. Another commenter suggested that BSEE should monitor credit ratings continuously, like BOEM does, and rely on those credit ratings when determining whether a surety bond is required. In this manner, the commenter suggested that BSEE use BOEM's data to determine if a surety bond on appeal is necessary.

Response: BSEE agrees that the proposed appeal bond is not necessary in light of existing financial assurance requirements and is not finalizing the proposed revisions to § 250.1709 and 30 CFR 290.7. DOI will continue to rely on other existing financial assurance requirements to ensure adequate security for decommissioning obligations.

4. Reverse Chronological Order (RCO)

Comment: Many comments favored BSEE's proposal to constrain itself to issuing decommissioning orders in RCO, asserting it would avoid delays associated with the current process. As some commenters noted, going down the chain-of-title to identify recent predecessors would first focus on those parties that most recently obtained security for the

outstanding decommissioning obligations on which the current interest holders defaulted. The use of an RCO method, according to some commenters, would be “a more efficient method of unlocking any security posted by the defaulting party” and would in turn hasten performance of decommissioning work.

While these commenters broadly appreciated the RCO approach, they expressed divergent views as to how BSEE should issue decommissioning orders when current interest holders fail to perform their obligations. Some commenters urged BSEE to issue orders to the immediate predecessor of any defaulting party before engaging joint owners or co-lessees among the current set of interest holders. Other commenters expressed concern that BSEE would not use all available options to address decommissioning obligations with current interest holders before turning to predecessors.

Response: BSEE agrees in part with the commenters’ divergent views of the proposed RCO process and has determined that the process is not the most effective method for issuing decommissioning orders in all situations. Accordingly, BSEE is not finalizing the proposed RCO revisions. BSEE will continue to evaluate the process for issuing decommissioning orders and will continue to issue decommissioning orders to jointly and severally liable parties on a case-by-case basis.

Comment: One commenter disagreed with BSEE’s proposal to organize groups of predecessors by changes in designated operators over time, as proposed in § 250.1708(a)(1), and urged BSEE to delete this subsection, arguing it unnecessary and confusing. The commenter recommended that, in the event a current lessee, sublessee, or grant holder defaults on its decommissioning obligation, BSEE should issue its decommissioning orders to the most recent predecessors in the chain of title of the defaulting party.

Response: BSEE agrees in part with the commenter’s suggestion to remove certain provisions of proposed § 250.1708, including the relevant parts of the proposed § 250.1708(a)(1). BSEE will retain the existing flexibility to issue decommissioning orders to

jointly and severally liable parties on a case-by-case basis to ensure decommissioning obligations are conducted in a manner that ensures safety and protection of the environment.

Comment: A commenter suggested that BSEE should reconsider proposed § 250.1708(d), which would have allowed BSEE to depart from RCO in certain circumstances. The commenter suggested redrafting that provision to bring predictability to when and under what conditions RCO would be implemented. The commenter asserted that proposed § 250.1708(d) makes RCO “unpredictable and wholly discretionary” for BSEE and its regional supervisor.

Response: Based on comments, BSEE is discarding the proposed RCO process requirements, including the exceptions described in proposed § 250.1708(d). BSEE will retain the existing flexibility to issue decommissioning orders to jointly and severally liable parties on a case-by-case basis to ensure decommissioning obligations are conducted in a manner that ensures safety and protection of the environment.

Comment: A commenter asserted that BSEE’s proposed use of RCO would erode the joint and several liability provisions of leases. The commenter maintained that efforts to enforce decommissioning orders against the most recent predecessor might incentivize other predecessors to seek bankruptcy protection during the decommissioning process (which could take years or decades to ultimately collect funds), thus leading to fewer viable predecessors to perform decommissioning. The commenter claimed that the rationale for surety bonds demonstrates why the RCO process would be risky: while BSEE seeks to enforce a decommissioning order, predecessors may become insolvent, and infrastructure may deteriorate. While acknowledging that the proposed appeal surety bond would slightly mitigate this risk, the commenter noted that this bonding requirement would apply only to appeals and not to other aspects of the decommissioning process. Finally, the commenter argued that there “is no good reason for BSEE to adopt this [RCO] approach, as BSEE appears to acknowledge. Any confusion and inefficiency among the parties is not an issue for BSEE to resolve.” The

commenter indicated that adopting RCO would make the decommissioning process less efficient and recommended that BSEE should instead issue decommissioning orders to all jointly and severally liable parties. Finally, the commenter requested that BSEE abandon the proposed rule or require all potentially liable lessees to post surety bonds pending final execution of and compliance with decommissioning orders.

Response: BSEE shares the commenter’s commitment to eliminating risk associated with decommissioning liabilities and to ensuring BSEE retains broad authority to enforce all decommissioning requirements. To the extent that the commenter suggests that the final rule will inadequately protect the public interest, BSEE disagrees. The commenter’s primary concerns lie with the proposed RCO requirements, which BSEE is not codifying in this final rule. BSEE is finalizing the requirements for timely monitoring of facilities, assessing risks, and submitting plans once BSEE issues a decommissioning order to predecessors. BSEE retains its discretion concerning issuance of decommissioning orders, and BSEE will continue to exercise this authority to avoid unreasonable delays in decommissioning. BSEE will continue to evaluate the process for issuing decommissioning orders and will ensure that decommissioning takes place in a timely manner to safeguard safety and environmental protection.

5. Miscellaneous Comments

Comment: A commenter asserted that the proposed rule would create more financial risks and that the proposed rule’s financial assurance procedures would be inadequate and would limit BOEM’s and BSEE’s ability to enforce joint and several liability provisions. This commenter also stated that the proposed rule would be “highly likely to cause environmental effects” and, thus, would require an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA).

The commenter also asserted that the proposed rule would result in a mismatch between BOEM’s proposal to “base obligations on the financial strength of the strongest co-lessee” and BSEE’s proposal to “place primary decommissioning responsibilities on the most recent and

likely financially weakest co-lessee.” The overall effect would be to “shift the financial burden for decommissioning from large firms to smaller firms that have less ability to cover decommissioning costs,” the commenter said.

Response: To the extent that the commenter suggests that the final rule will increase financial risks or implement an inadequate procedure to protect the public interest, BSEE disagrees. BSEE also disagrees that the provisions being codified in the final rule are likely to cause environmental effects or that the final rule necessitates an environmental assessment or environmental impact statement under NEPA. BSEE is not finalizing the proposed provisions of primary concern to the commenter in this final rule. The final rule clarifies and adds transparency to the process by which BSEE will enforce decommissioning obligations on existing lessees and RUE grant holders. The final rule does not alter or relieve the accrued liability of any party or alter or erode BSEE’s enforcement authority. Accordingly, because the final rule is of “an administrative, financial, legal, technical, or procedural nature,” it meets the requirements for a Departmental categorical exclusion at 43 CFR 46.210(i) under NEPA. Further, extraordinary circumstances do not exist that would preclude the use of this categorical exclusion under 43 CFR 46.215.

BSEE also disagrees that this rule diminishes BSEE’s authority to enforce joint and several liability. This rule does not undermine any aspect of the joint and several liability regime. The commenter was primarily concerned with the proposed RCO requirements, which have been discarded. BSEE retains its decision-making discretion concerning issuance of decommissioning orders, and BSEE will continue to exercise this authority to avoid unreasonable delays in decommissioning. BSEE will continue to evaluate the process for issuing decommissioning orders and will ensure that decommissioning takes place in a timely manner to safeguard safety and environmental protection.

Comment: A commenter stated that entities that default on decommissioning obligations should be disqualified from operating on the OCS. The commenter asserted that BSEE is encouraging these operators to repeat their previous behavior and default again.

Response: BSEE disagrees that the proposed or final rule encourages or rewards defaulting on obligations and notes that the regulatory provisions regarding disqualification are beyond the scope of this rulemaking. BSEE retains its full enforcement authority, including the authority to issue notices of incidents of noncompliance, assess civil penalties, and refer operators to BOEM for disqualification.

Comment: A commenter stated that all financial assurance available for decommissioning infrastructure should be available to the designated operator to assist in the decommissioning process.

Response: This comment is outside the scope of this rulemaking. BOEM, not BSEE, is responsible for maintaining sufficient financial assurance instruments and determining when such instruments should be forfeited to bring the lease or grant into compliance with regulations and lease or grant terms, including decommissioning requirements.

Comment: A commenter stated that BSEE should require certification by all current owners, including non-operating owners, who receive a decommissioning order stating that they have received the order and will either commit to participate in the decommissioning operations or explain why they contend that such performance is not required.

Response: This comment is outside the scope of this rulemaking. Regardless, BSEE disagrees with the commenter's suggestion. BSEE generally issues decommissioning orders to current interest holders only in limited contexts (*e.g.*, hazards, idle iron). BSEE's regulations and lease terms plainly establish the parameters of decommissioning responsibilities for current interest holders without need for an order. Further, regulated entities who receive BSEE orders are required to comply with those orders or be subject to further enforcement; such commitments and explanations are not necessary or appropriate.

Comment: One commenter stated that “BSEE’s proposal to redefine ‘you’” may have unintended consequences that were unconsidered by the Proposed Rule or its associated Regulatory Impact Analysis (RIA). For example, it is unclear whether the term ‘predecessor’ applies to present operations (there is no limiting phrase such as ‘depending on the context of the regulations’ as found in BOEM’s current regulations in 30 CFR § 556.105), and these potential effects have not been discussed in the Preamble of the Proposed Rule nor assessed in BSEE’s RIA.

Response: BSEE agrees in part with the commenter’s suggestions. BSEE’s intent in adding references to predecessors as “you” or “I” in § 250.1701(d) was only to ensure that those provisions of part 250 subpart Q applicable to the accrued decommissioning obligations of predecessors could be clearly and appropriately applied to those entities as intended. BSEE has modified the language in final § 250.1701(d) to note the inclusion of predecessors in those terms “as appropriate in the context of the particular regulation.”

Comment: A commenter stated that predecessors will be significantly impacted by orders or demands placed on them by BSEE should current lessees or grant holders default on their decommissioning obligations.

Response: BSEE disagrees with the implication that this rulemaking will significantly alter the impacts to predecessors from default by assignees. This rule does not address how or when the obligations accrue or are held by multiple parties. Under existing and longstanding regulations, all parties that accrue decommissioning obligations hold those obligations jointly and severally until those obligations are met (§ 250.1701). BSEE may call upon predecessors to perform their accrued decommissioning obligations if their assignee or a subsequent assignee fails to perform (30 CFR 556.710 and 556.805). This rule does not alter the nature of those obligations or BSEE authorities for issuing orders or demands to enforce them. Rather, it merely clarifies the process by which BSEE will carry out those existing authorities, largely in keeping

with current practice and by providing greater transparency to predecessors regarding what to expect from that process. Accordingly, this comment does not warrant modifications to this rule.

Comment: Multiple commenters asserted that Government approval of an assignment of record title interest or operating rights marks the point in time when no further decommissioning obligation accrues to an assignor (predecessor) on the lease.

Response: This comment is outside the scope of this rulemaking. Current regulations that are not the subject of this rulemaking identify the point at which accrued obligations attach to assignors and assignees. *See, e.g.,* 30 CFR 556.710-556.713. This rulemaking does not alter those provisions. Accordingly, this comment does not warrant any modifications to the language in this final rule.

Comment: A commenter asserted that BSEE should use all the tools in its toolbox to ensure that the current operator timely addresses its idle iron obligations.

Response: While this comment is outside the scope of this rulemaking, BSEE agrees with the commenter and currently exercises its authority to ensure operators and lessees address idle iron to ensure safety and environmental protection.

IV. Section-by-Section Discussion of Revisions

Part 250-OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Definitions (§ 250.105)

This section of the current regulations defines certain terms used throughout part 250 and clarifies their meaning as used in certain subparts or sections, as applicable.

Summary of proposed revisions:

BSEE proposed to amend § 250.105 by removing the terms and definitions for “Easement” and “Right-of-use” and replacing them with a new term and definition for “Right-of-Use and Easement (RUE).” The revision would make BSEE’s regulations consistent with BOEM’s regulations. The proposed amendment would clearly define an RUE grant as an

authorization to use a portion of the seabed not encompassed by the holder's lease to construct, modify, or maintain platforms, artificial islands, facilities, installations, and other devices established to support the exploration, development, or production of oil and gas, mineral, or energy resources on the OCS or a State submerged lands lease.

Summary of final rule revisions:

BSEE considered the submitted comments and has included a slightly revised definition in the final rule. The revised definition adds after the word "construct," "secure to the seafloor, use," and after the word "platforms," "sea floor production equipment." These changes make the relevant definition in part 250 more consistent with BOEM's corresponding definitions proposed for 30 CFR 550.105 and 30 CFR 556.105, and more accurately reflect the scope of rights available under an RUE grant.

What do the terms "decommissioning," "obstructions," and "facility" mean? (§ 250.1700)

This section of the current regulations defines certain terms used throughout the decommissioning regulations in part 250 subpart Q.

Summary of proposed revisions:

BSEE proposed to revise the section heading to include the term "predecessor" and to revise paragraph (a)(2) to include the area of an RUE grant among the areas that, through decommissioning, must be returned to a condition that meets the requirements of BSEE and other applicable agencies. This revision aligns with the other proposed revisions to the decommissioning obligations associated with RUE grants. BSEE also proposed to add a new paragraph (d) defining the term "predecessor" to mean a prior lessee, operating rights owner, or RUE or ROW grant holder that is liable for accrued obligations on that lease or grant. This definition is designed to clarify which entities, including assignors, remain liable for the decommissioning obligations that accrued during their prior ownership of an interest in a lease or grant for purposes of the proposed provisions establishing BSEE's modified approach toward enforcement of such obligations.

Summary of final rule revisions:

BSEE considered the comments submitted on the proposed section and has included the proposed revisions in the final rule without any substantive changes.

Who must meet the decommissioning obligations in this subpart? (§ 250.1701)

This section of the current regulations identifies who is responsible and liable for decommissioning obligations.

Summary of proposed revisions:

BSEE proposed to add new paragraph (c) to this section and redesignate the existing paragraph (c) as paragraph (d). The new paragraph (c) would clarify that all holders of an RUE grant are jointly and severally liable, along with other liable parties, for meeting decommissioning obligations on their RUE, including those pertaining to a well, pipeline, platform, or other facility, or an obstruction, as the obligations accrue and until each obligation is met. BSEE also proposed to revise the current definition of “you” in existing paragraph (c) (redesignated as paragraph (d) under the proposed rule) to include RUE grant holders and predecessors-in-interest among the parties categorized as “you” or “I” for purposes of the part 250 subpart Q decommissioning regulations. These revisions were designed to ensure alignment between § 250.1701 and the other proposed revisions to subpart Q.

Summary of final rule revisions:

BSEE considered the comments submitted on this proposed section and has included the proposed revisions in the final rule with two minor changes. First, BSEE clarifies in new paragraph (c) that prior owners of operating rights who accrued decommissioning obligations for facilities or obstructions that remain on an RUE grant are still jointly and severally liable until those obligation are met. This revision provides consistency with paragraphs (a) and (b). Second, as discussed above in section III of this preamble, in response to public comment, BSEE has modified the incorporation of predecessors into the definitions of “you” and “I” to attach only “as appropriate in the context of the particular regulation.”

When do I accrue decommissioning obligations? (§ 250.1702)

This section of the current regulations identifies certain operations or actions by which decommissioning obligations accrue.

Summary of proposed revisions:

BSEE proposed to revise paragraph (e) to clarify that all holders of a pipeline ROW grant would accrue the obligation to decommission. BSEE also proposed to redesignate paragraph (f) as paragraph (g) and add a new paragraph (f). Under the proposed paragraph (f), an entity would accrue decommissioning obligations when it is or becomes the holder of an RUE grant on which there is a well, pipeline, platform, other facility, or an obstruction. These proposed changes were designed to implement the RUE decommissioning principles discussed in the preamble to the proposed rule and to reflect BSEE practice related to multiple ROW grant holders.

Summary of final rule revisions:

BSEE considered the comments submitted on the proposed section and has included the proposed revisions in the final rule with a minor revision in paragraph (e) to add the word “grant” after “right-of-way” to ensure the proper term is utilized correctly.

What are the general requirements for decommissioning? (§ 250.1703)

This section of the current regulations identifies certain steps or actions that must be taken when a facility is no longer useful for operations.

Summary of proposed revisions:

BSEE proposed to revise paragraph (e) to clarify that an RUE grant holder must clear the seafloor of all facilities and obstructions created by its RUE grant operations. This revision was designed to ensure alignment between § 250.1703 and the other proposed revisions to subpart Q, including the RUE decommissioning principles discussed in the preamble to the proposed rule.

Summary of final rule revisions:

BSEE considered the comments submitted on the proposed section and has included the proposed revisions in the final rule with a minor correction of a typographical error by replacing the proposed rule's reference to "right-way" with the appropriate and intended "right-of-way."

What decommissioning applications and reports must I submit and when must I submit them? (§ 250.1704)

This section of the current regulations requires submittal of specified decommissioning applications and reports. This section also identifies the required timeframes to submit the applicable documents to BSEE and includes additional instructions.

Summary of proposed revisions:

BSEE proposed to add a new paragraph (b) in the table to provide that predecessors-in-interest who receive decommissioning orders under proposed § 250.1708 must submit a decommissioning plan for BSEE approval within 90 days of receiving the order. The proposed § 250.1708 would require that the decommissioning plan include a scope of work and schedule to address wells, pipelines, and platforms. This proposed revision reflects the changes in proposed § 250.1708, regarding decommissioning plans, discussed below.

Summary of final rule revisions:

After consideration of the comments received on this proposed section and as explained in the responses to comments in section III of this preamble, BSEE is extending the timeframe in paragraph (b) for order recipients to submit their decommissioning plan from 90 to 150 days. These changes are necessary to reflect corresponding edits to § 250.1708(a). BSEE is also changing the word "upon" in the first column of the proposed paragraph (b) to the word "after," as a grammatical correction, and updating internal regulatory cross-references to address the below-discussed changes to § 250.1708.

How will BSEE enforce accrued decommissioning obligations against predecessors? (§ 250.1708)

As provided for in the proposed rule, this new section explains how BSEE will issue decommissioning orders to predecessors-in-interest for accrued decommissioning obligations. Additionally, this section clarifies the actions predecessors must take once an order is issued.

Summary of proposed revisions:

BSEE proposed to add a new § 250.1708 (in place of the currently reserved § 250.1708). Under proposed paragraph (a) of this section, BSEE would issue decommissioning orders to predecessor lessees and other interest holders in reverse chronological order through the chain-of-title when holding such predecessors responsible for accrued decommissioning obligations. Also under proposed paragraph (a), BSEE would issue such orders to groups of predecessors organized according to changes in the designated operator over time, as well as to any predecessor who assigned interests to a party that has defaulted.

Proposed paragraph (b) would require recipients of such predecessor-in-interest orders to identify a single entity to begin maintaining and monitoring any facility identified in the order within 30 days of receiving it. It would also require recipients to designate a single entity as the operator for decommissioning operations within 60 days of receiving the order. Further, it would require recipients to submit a decommissioning plan within 90 days of receiving the order that included the scope of work and schedule for site clearance of all facilities, pipelines, and obstructions identified in the order. Finally, proposed paragraph (b) would require recipients to perform the required decommissioning in the time and manner specified by BSEE in its decommissioning plan approval.

Proposed paragraph (c) would specify that failure by a predecessor-in-interest to comply with an order to maintain and monitor a facility and to submit a decommissioning plan may result in various enforcement actions, including civil penalties and disqualification as an operator.

Proposed paragraph (d) would allow BSEE to depart from the RCO sequence and to issue orders to any or all predecessors-in-interest to perform their respective accrued decommissioning obligations when:

(1) None of the predecessors who had been ordered to perform obtained approval of a decommissioning plan or performed decommissioning according to an approved decommissioning plan;

(2) The regional supervisor determined that there was an emergency condition, safety concern, or environmental threat, such as improperly maintained and monitored facilities, leaking wells or vessels, sustained casing pressure on wells, or lack of required valve testing; or

(3) The regional supervisor determined that applying the RCO sequence would unreasonably delay decommissioning.

Proposed paragraph (e) would clarify that BSEE's issuance of decommissioning orders to additional predecessors-in-interest does not relieve any current lessee or grant holder, or any other predecessor, of its obligations to comply with any prior decommissioning order or to satisfy its accrued decommissioning obligations.

Proposed paragraph (f) would provide that the appeal of any decommissioning order did not prevent BSEE from proceeding against other predecessors under proposed paragraph (d).

Summary of final rule revisions:

BSEE considered comments on the proposed revisions and has modified § 250.1708 of the final rule as discussed here and above in section III. BSEE discarded proposed paragraphs (a) and (d) because it is not proceeding with the proposed RCO process. Proposed paragraphs (b) and (c) are now paragraphs (a) and (b) respectively in the final rule with minor revisions. Proposed paragraphs (e) and (f) are redesignated as paragraphs (c) and (d) respectively in the final rule.

BSEE is revising paragraph § 250.1708(a) in the final rule by adding “unless otherwise specified in the order” to acknowledge its authority under existing regulations to order

performance on timelines other than those established in paragraphs (a)(1) through (a)(3), when warranted by the circumstances. *See, e.g.,* §§ 250.101, 250.106, 250.107, 250.1711, and 30 CFR 556.710. BSEE is revising paragraph § 250.1708(a)(2) in the final rule to allow the designation of an operator “or agent,” consistent with its current regulation. As explained above in section III, in response to comments, BSEE is also revising the timeframes in paragraphs § 250.1708(a)(2) and (3) of the final rule as follows:

(2) Designate the operator or agent for the decommissioning activities within 90 days of receiving the order; and

(3) Submit a decommissioning plan to BSEE within 150 days of receiving the order.

When do I have to remove platforms and other facilities? (§ 250.1725)

This section of the current regulations identifies the timeframes and certain required actions when removing platforms and facilities.

Summary of proposed revisions:

BSEE proposed to expand the first sentence of paragraph (a) to provide that an RUE grant holder must remove all platforms and other facilities within 1 year after the RUE grant terminates unless the grant holder receives approval to maintain the structure to conduct other activities. This proposed revision was designed to ensure alignment between § 250.1725 and the other proposed revisions to part 250 Subpart Q regarding the RUE decommissioning principles discussed in the preamble to the proposed rule.

Summary of final rule revisions:

BSEE has considered the comments submitted on the relevant topics of the proposed section, and BSEE has included the proposed language in the final rule without change.

V. Procedural Matters

A. Regulatory Planning and Review (Executive Orders (E.O.) 12866, 13563 and 13771)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has reviewed this final rule and determined that, with the limited scope of proposed changes being finalized, it is no longer a significant action under E.O. 12866.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. BSEE has developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires agencies to analyze the economic impact of regulations when there is likely to be a significant economic impact on a substantial number of small entities and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the regulation will not have a significant economic impact on a substantial number of small entities.

BSEE completed a final regulatory flexibility analysis to assess the impact of this final rule on small entities. BSEE concludes its changes will not result in any incremental change to the existing burdens on small entities. This final rule merely clarifies and aligns current regulations regarding accrual of decommissioning liability with current policy and practice. The final rule provides clarity and transparency regarding the manner in which BSEE enforces those existing liabilities. Impacts on individual predecessors-in-interest that BSEE may approach in

any particular circumstances are highly case-dependent and too uncertain to evaluate at a general level. Regardless, the final rule largely leaves existing regulation and BSEE practice unchanged.

Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

BSEE did not receive any public comments on the IRFA, or that addressed impacts on small businesses.

In response to public comments on other issues, BSEE discarded its proposals to enforce accrued decommissioning obligations against predecessor lessees, owners of operating rights, or grant holders in RCO following default by the current lessees, owners, or interest holders. BSEE also discarded its proposal to require any party appealing and seeking to stay a final decommissioning order to post a surety bond. Accordingly, any potential impacts on small entities arising from these proposed revisions will not be realized.

This final rule focuses on clarifying the decommissioning responsibilities of RUE grant holders and formalizing BSEE's practices associated with decommissioning orders to predecessors-in-interest. BSEE is making its procedures for enforcing decommissioning compliance more transparent. This will provide the affected companies with greater certainty regarding when they may be approached and how they will be expected to comply with BSEE's decommissioning orders. BSEE considers these changes to be a regulatory codification of long-standing practice. As a result, BSEE concludes that all companies – large or small – operating on the OCS will not face an increased burden over the current baseline of regulatory requirements and current practice.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Final Rule Will Apply

The RFA defines a small entity as either a small business, a small not-for-profit organization, or a small governmental jurisdiction. BSEE determined that the final rule will not impact small not-for-profit organizations or small government jurisdictions. Thus this analysis focuses on impacts to small businesses.

The final rule will affect OCS lessees and RUE and pipeline ROW grant holders. BSEE adopts and incorporates the relevant analysis from BOEM's IRFA analysis. BOEM estimated that 455 companies have ownership interests in OCS leases and grants. The definition of small business varies from industry to industry to reflect industry size differences. Companies that will operate under this final rule are classified primarily under North American Industry Classification System (NAICS) codes 211120 ("Crude Petroleum Extraction"), 211130 ("Natural Gas Extraction"), and 486110 ("Pipeline Transportation of Crude Oil and Natural Gas"). For NAICS classifications 211120 and 211130, the Small Business Administration defines a small business as one with fewer than 1,250 employees; for NAICS code 486110, as one with fewer than 1,500 employees. Based on this criterion, approximately 319 (70 percent) of the companies subject to this final rule met the definition of a small business. All these small businesses are potentially impacted by this rule. Therefore, BSEE expects that the final rule will affect a substantial number of small entities.

BSEE notes that small businesses that acquire interests in OCS leases and grants do so with full knowledge of the joint and several liability regulatory framework. This framework binds them to a decommissioning obligation until it is met, even when that obligation might be contingent upon an assignee's default. This final rule clarifies and aligns BSEE's regulatory framework governing liability and decommissioning obligation with its current policy and practice. Therefore, BSEE believes the additional cost of this final rule is zero for all affected companies, including small businesses, because the rule reinforces the current baseline. For these reasons, BSEE believes the final rule is unlikely to significantly affect small businesses.

C. Congressional Review Act

This rule will clarify and add transparency to existing requirements. The changes will not have any negative impact on the economy or any economic sector, productivity, jobs, the environment, or other units of government. The changes codified in the final rule clarify interested parties' decommissioning liabilities for facilities on RUE grants and provide

predecessors-in-interest with explicit decommissioning compliance expectations. Accordingly, this rule is not a major rule under 5 U.S.C. 804(2) of the Congressional Review Act because implementation of this rule will not:

- (a) Have an annual effect on the economy of \$100 million or more;
- (b) Result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (c) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$189 million per year.¹ This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Moreover, the rule would not have disproportionate budgetary effects on these governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required, and BSEE has chosen not to prepare such a statement.

E. Takings Implication Assessment (E.O. 12630)

This final rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

¹ The private-sector cost threshold established in UMRA in 1996 was \$100 million. After adjusting for inflation, the 2022 private-sector threshold is \$189 million.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)

BSEE strives to strengthen its government-to-government relationships with American Indian and Alaska Native Tribes through a commitment to consultation with the Tribes and recognition of their right to self-governance and Tribal sovereignty. We are also respectful of our responsibilities for consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations. We have evaluated the rule under the Department's consultation policy, under Departmental Manual part 512 chapters 4 and 5, and under the criteria in E.O. 13175 and determined that there are no substantial direct effects on Tribes.

I. Paperwork Reduction Act (PRA)

This final rule contains a collection of information that we have submitted to OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB previously reviewed and approved the information collection requirements in part 250 Subpart Q and assigned OMB Control Number 1014-0010, which expires April 30, 2023. We are seeking OMB renewal of this control number for another 3 years.

The proposed rule was published in the *Federal Register* on October 16, 2020 (85 FR 65904) and solicited comments on the collections of information for 60 days. Those comments are discussed below.

This final rule will add new collections of information under 30 CFR part 250 Subpart Q related to the decommissioning of oil, gas, and sulfur infrastructure on the OCS. These regulatory requirements are the subject of this information collection request.

We use the information collected under Subpart Q to ensure that OCS operations are carried out in a safe and environmentally protective manner, do not interfere with the rights of other OCS users, and balance the conservation and development of OCS resources. The following regulatory changes will affect the annual burden hours; however, they will not impact non-hour cost burdens.

The final rule will formalize and make explicit BSEE practice and expectations surrounding enforcement of accrued decommissioning obligations against predecessors-in-interest following failure to perform by current lessees, operating rights holders, and grantees.

Changes to the IC Between the Proposed Rule and the Final Rule Based on Comments

After consideration of the public comments and as explained in section III of this preamble, BSEE is extending the timeframe for submitting decommissioning plans in new § 250.1708(a) from 90 to 150 days. The final rule will require all predecessors-in-interest who receive a decommissioning order to submit a work plan and schedule as directed under §§ 250.1704(b) and 250.1708(a). BSEE considers this necessary to protect the public from incurring future decommissioning costs and to prevent safety and environmental risks posed by delayed decommissioning. Within 150 days of receiving a decommissioning order under § 250.1708, the recipients must submit a work plan and schedule that addresses all wells, platforms, other facilities, pipelines, and site clearance. This requirement will add an estimated 4,320 annual burden hours to the existing OMB control number (+4,320 annual burden hours).

After consideration of the public comments and as explained in section III of this preamble, BSEE is discarding its proposal to require any party appealing and seeking a stay of a decommission order to post a surety bond.

Title of Collection: “Revisions to Regulations under 30 CFR Part 250 Subpart Q – Decommissioning.”

OMB Control Number: 1014-0010.

Form Number: None.

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: Potential respondents are Federal OCS oil, gas, and sulfur lessees and operators and RUE and ROW grant holders.

Total Estimated Number of Annual Respondents: Currently, there are approximately 550 Federal OCS oil, gas, and sulfur lessees and RUE and ROW grant holders. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 3,248 responses.

Total Estimated Number of Annual Burden Hours: 15,997 hours.

Respondent’s Obligation: Mandatory.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Non-Hour Burden Cost: \$1,143,556.

BURDEN TABLE

[New requirements shown in bold; Changes to existing requirements are italicized.]

L/T = Lease Term

Burden Breakdown

ROW = Right-of-Way

Citation 30 CFR Part 250 Subpart Q	Reporting Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burdens		
General				
1704(h); 1706(a), (f); 1712; 1715; 1716; 1721(a),(d), (f)- (g); 1722(a), (b), (d); 1723(b); 1743(a); Sub G	These sections contain references to information, approvals, requests, payments, etc., which are submitted with an Application for Permit to Modify (APM), the burdens for which are covered under its own information collection.	APM burden covered under 1014-0026		

1700 thru 1754	General departure and alternative compliance requests not specifically covered elsewhere in Subpart Q.	Burden covered under Subpart A 1014-0022		0
1703; 1704	Request approval for decommissioning.	Burden included below		0
1704(b); 1708(a)	Submit work plan & schedule under § 250.1708(a) that addresses all wells, platforms and other facilities, pipelines, and site clearance within 150 days upon receiving an order to perform decommissioning; additional information as requested by BSEE.	1,440	3 submittals	4,320
1704(j), (k)	Submit to BSEE, within 120 days after completion of each decommissioning activity (including pipelines), a summary of expenditures incurred; any additional information that will support and/or verify the summary.	1	1,320 summaries (including pipelines)/ additional information	1,320
1704(j); NTL	Request and obtain approval for extension of 120-day reporting period; including justification.	15 min.	75 requests	19
1704(j)	Submit certified statement attesting to accuracy of the summary for expenditures incurred.	Exempt from the PRA under 5 CFR 1320.3(i)(1).		0
1712	Required data if permanently plugging a well.	Requirement not considered information collection under 5 CFR 1320.3(h)(9).		0
1713	Notify BSEE 48 hours before beginning operations to permanently plug a well.	0.5	725 notices	363
1721(f)	Install a protector structure designed according to 30 CFR part 250, Subpart I, and equipped with aids to navigation. (These requests are processed via the appropriate platform application, 30 CFR part 250 Subpart I by the Office of Structural and Technical Support (OSTS.))	Burden covered under Subpart I 1014-0011		0
1721(e); 1722(e), (h)(1); 1741(c)	Identify and report subsea wellheads, casing stubs, or other obstructions; mark wells protected by a dome; mark location to be cleared as navigation hazard.	U.S. Coast Guard requirements.		0
1722(c), (g)(2); 1704(i)	Notify BSEE within 5 days if trawl does not pass over protective device or causes damages to it; or if inspection reveals casing stub or mud line suspension is no longer protected.	1	11 notices	11
1722(f), (g)(3)	Submit annual report on plans for re-entry to complete or permanently abandon the well and inspection report.	2.5	98 reports	245
1722(h)	Request waiver of trawling test.	1.5	4 requests	6
1725(a)	Requests to maintain the structure to conduct other activities are processed, evaluated and permitted by the OSTs via the appropriate Platform Application process, 30 CFR part 250 Subpart I. (Other activities include but are not limited to activities conducted under the grants of rights-of-way (ROWs), rights – of-use and easement (RUEs), and alternate use rights-of-use and easement authority issued under 30 CFR part 250 Subpart J, 30 CFR 550.160, or 30 CFR part 585, etc.)	Burden covered under Subpart I 1014-0011		0
1725(e)	Notify BSEE 48 hours before beginning removal of platform and other facilities.	0.5	133 Notices	67
1726; 1704(a)	Submit initial decommissioning application in the Pacific and Alaska OCS regions.	20	2 applications	40
1727; 1728; 1730; 1703;	Submit final application and appropriate data to remove platform or other subsea facility structures	28	153 applications	4,284

1704(c); 1725(b)	(This included alternate depth departures and / or approvals of partial removal or toppling for conversion to an artificial reef.)	\$4,684 fee x 153 = \$716,652		
1729; 1704(d)	Submit post platform or other facility removal report; supporting documentation; signed statements, etc.	9.5	133 Reports	1,264
1740; 1741(g)	Request approval to use alternative methods of well site, platform, or other facility clearance; contact pipeline owner/operator before trawling to determine its condition.	12.75	30 requests /contacts	383
1743(b); 1704(g), (i)	Verify permanently plugged well, platform, or other facility removal site cleared of obstructions; supporting documentation; and submit certification letter.	5	117 certifications	585
1750; 1751; 1752; 1754; 1704(e)	Submit application to decommission pipeline in place or remove pipeline (Lease Term or Right-of-Way).	10	142 L/T applications	1,420
		\$1,142 L/T decommission fee x 142 = \$162,164		
		10	122 ROW applications	1,220
		\$2,170 ROW decommissioning fees x 122 = \$264,740		
1753; 1704(f)	Submit post pipeline decommissioning report.	2.5	180 reports	450
Total Burden			3,248 Responses	15,997 hours
			\$1,143,556 Non-Hour Cost Burdens	

J. National Environmental Policy Act

A detailed environmental analysis under NEPA is not required if a rule is covered by a categorical exclusion (see 43 CFR 46.205). This rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion because this rule is “of an administrative, financial, legal, technical, or procedural nature.” We have also determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. No. 106–554, app. C, sec. 515, 114 Stat. 2763, 2763A–153–154).

L. Effects on the Nation’s Energy Supply (E.O. 13211)

Under E.O. 13211, agencies are required to prepare and submit to OMB a statement of energy effects for “significant energy actions.” This statement should include details of any

adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) expected to result from the action and a discussion of reasonable alternatives and their effects.

The rule does not add new regulatory compliance requirements that lead to adverse effects on the Nation's energy supply, distribution, or use. The rule is not expected to affect the cost of energy. The provision regarding decommissioning responsibility for facilities on RUE grants does not increase the cost borne by industry but could share the financial burden and responsibility among applicable parties in a manner consistent with current regulatory and industry practice. Moreover, because BSEE's regulatory changes apply only after activities (*e.g.*, exploration, development, and production) have ended, those changes would not affect the Nation's energy supply, distribution, and use. This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a statement of energy effects is not required.

M. Clarity of This Regulation

BSEE is required by E.O. 12866, E.O. 12988, and Presidential memorandum of June 1, 1998, to write all rules in plain language. This means that each rule BSEE publishes must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

BSEE has drafted this rule in compliance with these requirements.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Rights-of-way, Reporting and recordkeeping requirements, Sulfur.

Laura Daniel-Davis
Principal Deputy Assistant Secretary
Land and Minerals Management

For the reasons stated in the preamble, BSEE amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 33 U.S.C. 1321(j)(1)(C); 43 U.S.C. 1334.

Subpart A—General

2. Amend § 250.105 by removing the definitions of “Easement” and “Right-of-use” and adding, in alphabetical order, the definition for “Right-of-Use and Easement (RUE)” to read as follows:

§ 250.105 Definitions.

* * * * *

Right-of-Use and Easement (RUE) means a right to use a portion of the seabed at an OCS site, other than on a lease you own, to construct, secure to the seafloor, use, modify, or maintain platforms, sea floor production equipment, artificial islands, facilities, installations, and other devices, established to support the exploration, development, or production of oil and gas, mineral, or energy resources from an OCS or State submerged lands lease.

* * * * *

Subpart Q—Decommissioning Activities

3. Amend § 250.1700 by revising the section heading and paragraph (a)(2) and adding paragraph (d) to read as follows:

§ 250.1700 What do the terms “decommissioning,” “obstructions,” “facility,” and “predecessor” mean in this subpart?

(a) * * *

(2) Returning the lease, pipeline right-of-way, or the area of a right-of-use and easement to a condition that meets the requirements of BSEE and other agencies that have jurisdiction over decommissioning activities.

* * * * *

(d) *Predecessor* means a prior lessee or owner of operating rights, or a prior holder of a right-of-use and easement grant or a pipeline right-of-way grant, that is liable for accrued obligations on that lease or grant.

4. Revise § 250.1701 to read as follows:

§ 250.1701 Who must meet the decommissioning obligations in this subpart?

(a) Lessees, owners of operating rights, and their predecessors are jointly and severally liable for meeting decommissioning obligations for facilities on leases, including the obligations related to lease-term pipelines, as the obligations accrue and until each obligation is met.

(b) All holders of a right-of-way grant and their predecessors are jointly and severally liable for meeting decommissioning obligations for facilities on their right-of-way, including right-of-way pipelines, as the obligations accrue and until each obligation is met.

(c) All right-of-use and easement grant holders and prior lessees or owners of operating rights of the parcel on whose leases there existed facilities or obstructions that remain on the right-of-use and easement grant are jointly and severally liable for meeting decommissioning obligations, including obligations for any well, pipeline, platform or other facility, or an obstruction, on their right-of-use and easement, as the obligations accrue and until each obligation is met.

(d) In this subpart, the terms “you” or “I” refer to lessees and owners of operating rights as to facilities installed under the authority of a lease; to pipeline right-of-way grant holders as to facilities installed under the authority of a pipeline right-of-way grant; and to right-of-use and easement grant holders as to facilities constructed, modified, or maintained under the authority of the right-of-use and easement grant. Predecessors to any of these interest holders are also included within the scope of these terms as appropriate in the context of the particular regulation.

5. Amend § 250.1702 by revising paragraph (e), redesignating paragraph (f) as paragraph (g), and adding new paragraph (f) to read as follows:

§ 250.1702 When do I accrue decommissioning obligations?

* * * * *

(e) Are or become a holder of a pipeline right-of-way grant on which there is a pipeline, platform, other facility, or an obstruction;

(f) Are or become the holder of a right-of-use and easement grant on which there is a well, pipeline, platform, other facility, or an obstruction; or

* * * * *

6. Amend § 250.1703 by revising paragraph (e) to read as follows:

§ 250.1703 What are the general requirements for decommissioning?

* * * * *

(e) Clear the seafloor of all obstructions created by your lease, pipeline right-of-way, or right-of-use and easement operations;

* * * * *

7. Amend § 250.1704 by redesignating paragraphs (b) through (j) as paragraphs (c) through (k) respectively, and adding new paragraph (b) to read as follows:

§ 250.1704 What decommissioning applications and reports must I submit and when must I submit them?

* * * * *

DECOMMISSIONING APPLICATIONS AND REPORTS TABLE

Decommissioning applications and reports	When to submit	Instructions
***** (b) Submit decommissioning plan per § 250.1708(a)(3) that addresses all wells, platforms and other facilities, pipelines,	Within 150 days of receiving an order to perform decommissioning under § 250.1708	Include information required under § 250.1708(a)(2) and (3)

and site clearance after receiving an order to perform decommissioning. *****		
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8. Add § 250.1708 to read as follows:

§ 250.1708 How will BSEE enforce accrued decommissioning obligations against predecessors?

(a) When BSEE issues an order to predecessors to perform accrued decommissioning obligations, the order recipients must, unless otherwise specified in the order:

(1) Within 30 days of receiving the order, begin maintaining and monitoring, through a single entity identified to BSEE, any facility, including wells and pipelines, as identified by BSEE in the order and in accordance with applicable requirements under this part (including, but not limited to, testing safety valves and sensors, draining vessels, and performing pollution inspections);

(2) Within 90 days of receiving the order, designate a single entity to serve as operator or agent for the decommissioning operations;

(3) Within 150 days of receiving the order, submit through the entity identified in paragraph (a)(2) of this section a decommissioning plan for approval by the Regional Supervisor that includes the scope of work and a reasonable decommissioning schedule for all wells, platforms and other facilities, pipelines, and site clearance, as identified in the order; and

(4) Perform the required decommissioning in the time and manner specified by BSEE in its decommissioning plan approval.

(b) Failure to comply with the obligations under paragraph (a) of this section to maintain and monitor a facility or to submit a decommissioning plan may result in a Notice of Incident of

Noncompliance and potentially other enforcement actions, including civil penalties and disqualification as an operator.

(c) BSEE's issuance of orders to any predecessors will not relieve any current lessee or grant holder, or any other predecessor, of its obligations to comply with any prior decommissioning order or to satisfy any accrued decommissioning obligations.

(d) A pending appeal, pursuant to 30 CFR part 290, of any decommissioning order does not preclude BSEE from proceeding against any or all predecessors other than the appellant.

9. Amend § 250.1725 by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 250.1725 When do I have to remove platforms and other facilities?

(a) You must remove all platforms and other facilities within 1 year after the lease, pipeline right-of-way, or right-of-use and easement terminates, unless you receive approval to maintain the structure to conduct other activities.* * *

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